

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MAJID AKARIMALI	:	CIVIL ACTION
	:	
v.	:	NO. 05-1009
	:	
NORTHWESTERN HUMAN SERVICES	:	

MEMORANDUM AND ORDER

Kauffman, J.

January 11, 2007

Plaintiff Majid Akarimali (“Plaintiff”) brings this action against Defendant Northwestern Human Services (“NHS”) alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), the Civil Rights Act of 1870, 29 U.S.C. §1981 (“§1981”), and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951, et seq. (“PHRA”). Specifically, Plaintiff alleges national origin discrimination in violation of Title VII, §1981, and the PHRA (Counts I, III, and IV, respectively), and retaliation in violation of Title VII and the PHRA (Counts II and V, respectively). Now before the Court is NHS’s Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56. For the reasons that follow, the Motion will be granted.

I. BACKGROUND

This case arises out of Plaintiff’s dismissal from his position as a Behavioral Specialist Consultant and/or Mobile Therapist (“BSC/MT”) at Northwestern Human Services (“NHS”). NHS is a non-profit corporation that provides behavioral health rehabilitation services (“BHRS services”) to children with social, emotional, or behavioral impairments. Defendant’s Statement of Material Facts (“Def.’s Statement”) ¶ 7; Plaintiff’s Response to Defendant’s Statement of Material Facts (“Pl.’s Resp. to Statement”) ¶ 7. BSC/MTs, such as Plaintiff, travel to homes and

schools to provide on-site services to children. Def.’s Statement ¶ 12; Pl.’s Resp. to Statement ¶ 12. A significant portion of NHS’s clients are referred by Community Behavioral Health (“CBH”), a managed care organization run by the City of Philadelphia that provides behavioral health services to the City’s Medicaid recipients. Def.’s Statement ¶ 16; Pl.’s Resp. to Statement ¶ 16. Plaintiff operated out of NHS’s facility at 265 East Lehigh Avenue, Philadelphia, PA.

Plaintiff’s problems with NHS began in December of 2002. At that time, CBH had just completed an audit of NHS’s Philadelphia staff to ensure that staff members were properly qualified and credentialed. Def.’s Statement ¶ 35; Pl.’s Resp. to Statement ¶ 35. CBH concluded that the credentials of many of NHS service providers would not meet new credential requirements CBH intended to impose. Def.’s Statement ¶ 37; Pl.’s Resp. to Statement ¶ 37. In turn, NHS conducted its own staff audits and began to “phase out” allegedly unqualified employees. Def.’s Statement ¶ 42-43. Several employees of African origin felt that they were not treated fairly in this process by Rhonda Matlack, a mid-level supervisor at NHS. Pl.’s Resp. to Statement ¶ 43. These employees felt improper credentials were used as a pretext to terminate them, whereas U.S. born employees were given time to correct any deficiencies in their credentials. The terminated employees sued NHS in a separate lawsuit. Id. at ¶ 43.

Matlack initially informed Plaintiff, who is also of African origin, that he too lacked proper credentials and would be terminated. See Pl.’s Resp. at Ex. H. However, Plaintiff provided Matlack with an official transcript demonstrating that he had received a Ph.D degree from Pacific Central University, an “online” distance learning school. After viewing Plaintiff’s transcript, Matlack relented and his termination was rescinded before he lost any of his clients. Pl.’s Dep. at 80, attached as Ex. A to Pl.’s Resp.

On June 19, 2003, Monica Horne, a case manager on two of Plaintiff's cases, sent Matlack an email stating, "I just met with [the mother of a client], and she informed me that she has not seen [Plaintiff] since she moved . . . which was over a month ago." Pl.'s Resp. at Ex. F. Matlack reported this issue to NHS's compliance department the next day, believing that it potentially implicated billing fraud. Id.

Subsequently, NHS's compliance department conducted an investigation into Plaintiff's billing records. Id. The compliance department's role at NHS is to conduct neutral investigations and to assemble facts for decisionmakers at the company. Dep. of Scott Silverman at 27-28, attached as Ex. K to Pl.'s Mot. Scott Silverman, a compliance specialist, was the lead investigator in Plaintiff's case. Id. at 23. Silverman was not aware of Plaintiff's national origin. Id. at 139. As part of his investigation, Silverman reviewed billing records and interviewed witnesses. On July 22, 2003, Silverman wrote in an email to Plaintiff's supervisors that he had:

"reviewed all of [Plaintiff's] current cases and identified several questionable progress notes. I say the notes were questionable because [Plaintiff] documents that he consulted with a teacher in school on the Sunday of Memorial Day weekend. He also documents that he saw a child at school on Memorial Day weekend as well. My feeling is that this calls into question all of this BSC's documentation."

Pl.'s Resp. at Ex. F. Dariana Lynch, a Regional Director of Children's Services at NHS and the supervisor in charge of terminating or retaining Plaintiff, responded with a request that Silverman clarify whether he had determined fraud occurred or whether there was just a suspicion of fraud. Silverman responded:

Schools are closed on Memorial Day. There is documentation that indicates [Plaintiff] met with teachers and a child at a school on the Sunday of Memorial Day weekend. There is more than one documented instance of this. I would consider this fraudulent documentation. I believe that you only need one instance of fraudulent documentation to determine that fraud took place. In this case, there is more than one.

Id. Lynch responded that she would confront Plaintiff with the documentation. Id. That same day, Matlack, after consultation with Lynch and NHS's Human Resources department, placed Plaintiff on administrative leave and removed him from his cases. Id. at Ex. G. The next day, NHS hired Nana Ajani to work the same position held by Plaintiff, as a BSC/MT at the 265 East Lehigh facility. Def.'s Statement ¶ 86; Pl.'s Resp. to Statement ¶ 86. Ajani immigrated to the United States from Africa in 1999.

On August 15, 2003, prior to confronting Plaintiff, Lynch emailed Silverman to report she had discovered additional discrepancies in Plaintiff's billing records:

I have reviewed all [of Plaintiff's vouchers] from 6/16/03 - 12/6/02 and compared the signatures to those on TSS vouchers. I found that the same person's signatures did not match a Willam Peterson. It was spelled Petterson for most of [Plaintiff's] vouchers but I also found a Peterson! I never heard of anyone who did not know how to spell their own name.

On the TSS vouchers I found a consistent Peterson across two TSS staff. I have asked staff to contact the school regarding this person/teacher to see if we can get an original signature or how he spells his name.

Id. at Ex. F.

Lynch subsequently received confirmation from John Paul Jones Middle School that William Peterson spelled his name with only one t. Def.'s Statement ¶ 136; Pl.'s Resp. to Statement ¶ 136. Lynch then confronted Plaintiff with the forged signatures and suspicious dates. Plaintiff did not deny or explain the inconsistencies. Def.'s Statement ¶ 137; Pl.'s Resp. to Statement ¶ 137. On October 6, 2003, after consulting with NHS's Human Resources Department, Lynch terminated Plaintiff's employment because of "evidence of fraud . . . in [his] billing documentation." Pl.'s Resp. at Ex. G. Her termination letter informed Plaintiff that he

had the right to appeal his termination. Id. Plaintiff chose not to do so.

As stated above, Matlack reported Plaintiff to the compliance department on June 20, 2003. Pl.'s Resp. at Ex. F. On July 3, 2003, Plaintiff initiated a complaint with NHS's Compliance Hotline alleging that Matlack had tried to “get rid” of him two months ago, along with “all of the African-American behavioral specialists,” by alleging he was not properly credentialed. Pl.'s Resp. at Ex. I. Now he complained, she was trying to get rid of him again. Id. He called the Hotline again on July 22, 2003, after Matlack informed him that he was being placed on administrative leave. Id. Plaintiff made a third telephone call to the Hotline on July 23, 2003. Id. On February 3, 2003, he filed the present action.

II. LEGAL STANDARD

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is “whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). “[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, “there can be ‘no genuine issue as to any material fact’ . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d Cir. 2001). If the movant meets that burden, the onus then “shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial.” Id.

III. ANALYSIS

A. Discrimination

Plaintiff alleges claims of national origin discrimination under Title VII, the PHRA, and § 1981. In order to establish a prima facie case of discrimination under these statutes, a plaintiff must demonstrate that: (1) he is a member of a protected class; (2) he was qualified for a position sought or held; (3) he was discharged from or denied the position; and (4) non-members of the protected class were treated more favorably. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Igwe v. E.I. Dupont De Nemours & Co., 180 Fed. Appx. 353, 355 (3d Cir. May 11, 2006) (same standard for Title VII and § 1981 claims based on intentional discrimination); Weston v. Commonwealth of Pennsylvania, 251 F.3d 420, 425 n.3 (3d Cir. 2001) (identical analysis under Title VII and the [PHRA]). If the plaintiff carries his initial burden of establishing a prima facie case, the burden shifts under the McDonnell Douglas framework to the employer to articulate a legitimate, non-discriminatory reason for the employee’s discharge. See id.

If the defendant satisfies this burden, the plaintiff must show that the legitimate reasons offered by the defendant are pretext. See Jones v. Sch. Dist. of Phila., 198 F.3d 403, 410 (3d Cir. 1999) (citing Tx. Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981)). In order to show pretext, the plaintiff must submit evidence which: (1) casts doubt on the legitimate reason proffered by the employer such that a factfinder could reasonably conclude that the reason was a

fabrication; or (2) allow the factfinder to infer that discrimination was more likely than not a motivating or determinative cause of the employee's termination. See Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994). "The non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered reasons for its action that a reasonable factfinder could rationally find them unworthy of credence, and hence infer that the employer did not act for [the asserted] non-discriminatory reasons." Id. (internal quotation marks and citations omitted). The plaintiff must show not merely that the employer's proffered reason was wrong, but that it was "so plainly wrong that it cannot have been the employer's real reason." Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108-09 (3d Cir. 1997)

Assuming, arguendo, that Plaintiff established a prima facie case of discrimination, NHS has come forward with a legitimate non-discriminatory reason for terminating him. Specifically, NHS stated that it fired him for committing widespread billing fraud.

NHS has presented evidence that it audited Plaintiff after receiving a complaint about his lack of service from the parent of a client. NHS's investigators discovered forged signatures on Plaintiff's payment vouchers for 16 dates. On those dates, he submitted forms with the signature of a teacher, William Peterson, from John Paul Jones Middle School in Philadelphia, PA. However, the signatures on Plaintiff's forms misspelled Peterson's name as "Petterson." Furthermore, his forms represented that he had provided services at John Paul Jones Middle School on two days, Sunday May, 25, 2003 and Monday, May 26, 2003 (Memorial Day), when school was not in session. After verifying that the signatures were forgeries and after giving him an opportunity to explain or deny the charges, NHS terminated Plaintiff's employment.

In order for Plaintiff to demonstrate pretext, he must “present evidence contradicting the core facts put forward by the employer as the legitimate reason for its decision.” Kautz v. Met-Pro Corp., 412 F.3d 463, 467 (3d Cir. 2005). Here, Plaintiff does not dispute that: (1) his vouchers contained 16 forged signatures, and (2) that he did not deny or explain the forgeries to Lynch when he was confronted with them. Instead, he alleges that “there is no way for those [fraudulent] documents to have made their way into the investigation” unless Lynch falsified them or she helped Matlack to falsify them. Pl.’s Resp. at 18.

In order to avoid summary judgment, however, more than mere allegations are required. See Port Auth. of N.Y. and N.J. v. Affiliated FM Ins. Co., 311 F.3d 226, 233 (3d Cir. 2002). Plaintiff must point to some evidence in the record that would allow a reasonable factfinder to conclude Lynch falsified, or helped falsify, his vouchers because of racial animus. Plaintiff attempts to meet this burden in two steps. First, he points to circumstantial evidence that Matlack, his immediate supervisor, harbored animus towards African employees. For evidence of this animus, Plaintiff chiefly relies on Matlack’s allegedly disparate treatment towards Africans during NHS’s change in credential requirements. Second, he contends that because Matlack and Lynch are friends, Lynch worked with Matlack to help her purge Africans from the company.

Plaintiff has failed to contradict the core facts relied upon by NHS to validly terminate him. While Matlack referred Plaintiff to the compliance department and was interviewed in connection with that department’s investigation, the investigation itself was conducted by Lynch and Silverman. As a compliance officer, Silverman helped compile and analyze the evidence against Plaintiff. Lynch possessed and exercised the authority to terminate him. Both Silverman

and Lynch personally reviewed Plaintiff's payment vouchers and both reached the conclusion that Plaintiff forged signatures. Despite Plaintiff's allegations, there is no evidence in the record to support his assertion that Lynch falsified or conspired to falsify payment vouchers. There is also no evidence that Lynch or Silverman did not genuinely believe he was guilty of misconduct. Finally, there is no evidence that Lynch or Silverman ever harbored animus towards Africans or discriminated against them. Indeed, Plaintiff does not dispute that Silverman was not aware of his national origin or that, the day after he was removed from his cases, NHS hired an immigrant of African descent to work the same position he held at the 265 East Lehigh facility.

Moreover, Plaintiff has never explicitly denied committing the forgeries. As stated previously, Plaintiff did not deny that he had submitted the forged vouchers when he was confronted with them prior to his termination. Even after the commencement of this suit, when Plaintiff was again confronted with the vouchers at his deposition, he merely stated that he did not "think" he had submitted the forged vouchers and that he "[could] not say 100 percent" that it was his signature on the forms. Pl.'s Dep. at 148-158, attached as Ex. A to Pl.'s Resp.

Based on the evidence before the Court, Plaintiff has failed to demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in NHS's proffered reason for his dismissal that a reasonable factfinder could rationally find it unworthy of credence. Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994). Accordingly, summary judgment on Plaintiff's discrimination claims will be granted.

B. Retaliation

Plaintiff also asserts retaliation claims under Title VII and the PHRA. He alleges that his dismissal was motivated by his telephone calls to NHS's compliance hotline. "To establish a

prima facie case of retaliation, a plaintiff must show that: (1) he engaged in a protected activity; (2) the employer took an adverse employment action against him; and (3) there is a causal connection between his participation in the protected activity and the adverse employment action." See Moore v. City of Phila., 461 F.3d 331, 340-41 (3d Cir. 2006) (citation omitted); see also Fasold v. Justice, 409 F.3d 178, 188 (3d Cir. 2005) (setting forth elements to establish the prima facie case under the ADEA). If an employee establishes the prima facie case, the McDonnell Douglas burden-shifting framework applies.

As discussed above, even assuming arguendo that Plaintiff could establish his prima facie case, he has not shown that there is a material issue of fact that NHS's reason for firing him, billing fraud, was pretextual. Thus, summary judgment will be granted on Plaintiff's retaliation claims.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment will be granted. An appropriate order follows.

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NORTHWESTERN HUMAN SERVICES	:	

ORDER

AND NOW, this 11th day of January, 2007, upon consideration of Defendant's Motion for Summary Judgment (docket no. 15), Plaintiff's Response thereto (docket no. 18), and Defendant's Reply (docket no. 19), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED**. Accordingly, the Clerk of the Court shall mark this case **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.